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10 JANET NAPOLITANO, as Secretary of the  
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11

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 FRANK JOSEPH CARDERELLA,  
16

17 Plaintiff,

18 v.

19 JANET NAPOLITANO, as Secretary  
20 of the Department of Homeland  
Security,  
21

22 Defendant.

No. CV09-8299 R (MANx)

DEFENDANT'S ANSWER TO  
INDIVIDUAL COMPLAINT FOR  
MONETARY AND INJUNCTIVE RELIEF  
FOR EMPLOYMENT DISCRIMINATION

Honorable Manuel L. Real

1 COMES NOW defendant Janet Napolitano, as Secretary of the Department of  
2 Homeland Security (“Defendant”), and in answer to plaintiff Frank Joseph Carderella’s  
3 (“Plaintiff”) Complaint, and without waiving the below-listed Affirmative Defenses,  
4 admits, denies and alleges as follows:

5 1. In response to Paragraph 1 of the Complaint, Defendant admits that  
6 Plaintiff was not selected for the position of Immigration and Naturalization Service  
7 (“INS”) Detention Enforcement Officer (“DEO”) in September 1996. Defendant  
8 contends the remaining allegations in Paragraph 1 are prefatory statements, or  
9 characterizations of Plaintiff’s claims, which do not require a response. To the extent  
10 any response is required, such allegations are denied.

11 2. In response to Paragraph 2 of the Complaint, Defendant admits that on  
12 January 29, 1997, Plaintiff filed a formal complaint of discrimination with INS and that  
13 the Office of Equal Employment Opportunity (“EEO”) investigated Plaintiff’s claim.  
14 Defendant further admits that in August 2008, the EEO notified Plaintiff that it could  
15 not locate his file and that, upon the EEO’s request, Plaintiff submitted documents  
16 relevant to his claim. Defendant further admits that the United States Immigration and  
17 Customs Enforcement (“ICE”) requested that the Office for Civil Rights and Civil  
18 Liberties (“CRCL”) within the Department of Homeland Security issue a final agency  
19 decision regarding Plaintiff’s claim, and that as of the date Plaintiff filed this action,  
20 the CRCL had not issued a final agency decision. Defendant denies the remaining  
21 allegations in Paragraph 2, except to the extent they constitute legal conclusions to  
22 which no answer is required.

23 3. In response to Paragraph 3 of the Complaint, Defendant lacks sufficient  
24 knowledge or information to form a belief as to the truth of the allegations therein and  
25 therefore denies them, except to the extent that they constitute legal conclusions to  
26 which no answer is required.

1           4.     In response to Paragraph 4 of the Complaint, Defendant admits the  
2 allegations therein.

3           5.     In response to Paragraph 5 of the Complaint, Defendant lacks sufficient  
4 knowledge or information to form a belief as to the truth of the allegations therein and  
5 therefore denies them, except to the extent that they constitute legal conclusions to  
6 which no answer is required.

7           6.     In response to Paragraph 6 of the Complaint, Defendant admits the  
8 allegations therein.

9           7.     In response to Paragraph 7 of the Complaint, Defendant contends that this  
10 Paragraph contains legal assertions regarding venue and/or jurisdictional basis which  
11 do not require an answer. To the extent any response is required, such allegations are  
12 denied.

13          8.     In response to Paragraph 8 of the Complaint, Defendant lacks sufficient  
14 knowledge or information to form a belief as to the truth of the allegations therein and  
15 therefore denies them, except to the extent that they constitute legal conclusions to  
16 which no answer is required.

17          9.     In response to Paragraph 9 of the Complaint, Defendant admits the  
18 allegations therein.

19          10.    In response to Paragraph 10 of the Complaint, Defendant admits that a  
20 DEO is a “covered” position. Defendant lacks sufficient knowledge or information to  
21 form a belief as to the truth of the remaining allegations, i.e., whether “Plaintiff was  
22 willing to take a pay cut in order to qualify for that ‘covered’ position,” and therefore  
23 denies them, except to the extent that they constitute legal conclusions to which no  
24 answer is required.

25          11.    In response to Paragraph 11 of the Complaint, Defendant admits that  
26 Plaintiff was not selected for the DEO position. Defendant denies the remaining  
27  
28

1 allegations in Paragraph 11, except to the extent that they constitute legal conclusions  
2 to which no answer is required.

3 12. In response to Paragraph 12 of the Complaint, Defendant lacks sufficient  
4 knowledge or information to form a belief as to the truth of the allegations therein, and  
5 therefore denies, except to the extent that they constitute legal conclusions to which no  
6 answer is required.

7 13. In response to Paragraph 13 of the Complaint, Defendant lacks sufficient  
8 knowledge or information to form a belief as to the truth of the allegations therein and  
9 therefore denies them, except to the extent that they constitute legal conclusions to  
10 which no answer is required.

11 14. In response to Paragraph 14 of the Complaint, Defendant denies the  
12 allegations therein, except to the extent that they constitute legal conclusions to which  
13 no answer is required.

14 15. In response to Paragraph 15 of the Complaint, Defendant denies the  
15 allegations therein, except to the extent that they constitute legal conclusions to which  
16 no answer is required.

17 16. In response to Paragraph 16 of the Complaint, Defendant denies the  
18 allegations therein, except to the extent that they constitute legal conclusions to which  
19 no answer is required.

20 17. In response to Paragraph 17 of the Complaint, Defendant denies the  
21 allegations therein, except to the extent that they constitute legal conclusions to which  
22 no answer is required.

23 18. In response to Paragraph 18 of the Complaint, Defendant admits the  
24 allegations therein.

25 19. In response to Paragraph 19 of the Complaint, Defendant admits the  
26 allegations therein.

1           20. In response to Paragraph 20 of the Complaint, Defendant admits the  
2 allegations therein.

3           21. In response to Paragraph 21 of the Complaint, Defendant admits the  
4 allegations therein.

5           22. In response to Paragraph 22 of the Complaint, Defendant admits the  
6 allegations therein.

7           23. In response to Paragraph 23 of the Complaint, Defendant admits the  
8 allegations therein.

9           24. In response to Paragraph 24 of the Complaint, Defendant admits the  
10 allegations therein.

11           25. In response to Paragraph 25 of the Complaint, Defendant admits the  
12 allegations therein.

13           26. In response to Paragraph 26 of the Complaint, Defendant admits the  
14 allegations therein.

15           27. In response to Paragraph 27 of the Complaint, Defendant admits the  
16 allegations therein.

17           28. In response to Paragraph 28 of the Complaint, Defendant admits that as of  
18 November 10, 2009 – the date Plaintiff filed this action – Plaintiff had not received a  
19 final decision without hearing or further communications from the Department of  
20 Homeland Security.

21                           **AFFIRMATIVE DEFENSES**

22                           **FIRST AFFIRMATIVE DEFENSE**

23           29. Plaintiff is barred from bringing any claim for which he did not timely file  
24 a formal EEO complaint or otherwise comply with the applicable statute of limitations.

25                           **SECOND AFFIRMATIVE DEFENSE**

26           30. Plaintiff fails to state a claim upon which relief may be granted.  
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28

1                                   **THIRD AFFIRMATIVE DEFENSE**

2           31.   With respect to any and all personnel actions of which Plaintiff complains,  
3 although such actions are not admitted hereby or herein, Defendant had at least one  
4 legitimate, nondiscriminatory, good faith, lawful and nonretaliatory reason.

5                                   **FOURTH AFFIRMATIVE DEFENSE**

6           32.   This Court lacks subject matter jurisdiction over this action in whole or in  
7 part.

8                                   **FIFTH AFFIRMATIVE DEFENSE**

9           33.   Plaintiff's claims are barred, in whole or in part, by the equitable doctrine  
10 of laches.

11  
12                                  **SIXTH AFFIRMATIVE DEFENSE**

13           34.   Plaintiff's claims are barred, in whole or in part, by the equitable doctrine  
14 of estoppel.

15                                  **SEVENTH AFFIRMATIVE DEFENSE**

16           35.   Plaintiff failed to mitigate damages.

17                                  **EIGHTH AFFIRMATIVE DEFENSE**

18           36.   Plaintiff's recovery, if any, must be reduced by any benefits compensating  
19 the same loss.

20                                  **NINTH AFFIRMATIVE DEFENSE**

21           37.   Some or all of plaintiff's claims are barred because they were voluntarily  
22 settled or abandoned.

23                                  **TENTH AFFIRMATIVE DEFENSE**

24           38.   Plaintiff may recover only those damages allowed under the law. Plaintiff  
25 is not entitled to recover punitive or exemplary damages, or pretrial interest against  
26 Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE**

39. Plaintiff's compensatory damages, if any, are limited to \$300,000.

**TWELFTH AFFIRMATIVE DEFENSE**

40. Defendant reserves the right to amend this Answer to assert such additional defense as may become apparent during the continuing course of discovery in this action.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of his Complaint;

2. That Plaintiff's Complaint be dismissed with prejudice and judgment entered in favor of Defendant;

3. That Defendant be awarded its costs of suit incurred in this action; and,

4. For such other and further relief as the Court deems just and proper.

Dated: March 1, 2010

GEORGE S. CARDONA  
Acting United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

/s/  
\_\_\_\_\_  
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Department of Homeland Security